

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES**

In the Matter of the SIRS Appeal
of New Life Transportation

**RECOMMENDATION ON MOTION TO DISMISS
AND MOTION FOR REINSTATEMENT**

This matter is before the undersigned Administrative Law Judge (ALJ) on the Department's Motion to Dismiss and Respondent's Motion to for [sic] Restoration [sic] in which the Respondent "moves the court for reinstatement."

Erika Schneller, Assistant Attorney General, Suite 900, 445 Minnesota Street, St. Paul, Minnesota 55101-2127, is appearing as attorney for the Department of Human Services (the Department). Jeffrey J. Thigpen, Duluth Federal Prison Camp, Inmate #10323-041, Unit S, Duluth Minnesota 55814, is representing New Life Transportation, which is not represented by counsel.

After considering everything in the record, and for the reasons stated in the Memorandum that follows,

NOW, THEREFORE, IT IS HEREBY RECOMMENDED THAT,

- (1) The Department's Motion to Dismiss be GRANTED;
- (2) The Respondent's Motion for Reinstatement be DENIED.

Dated this 23rd day of October, 2003.

s/ Bruce H. Johnson
BRUCE H. JOHNSON
Acting Chief Administrative Law Judge

NOTICE

This Report is only a recommendation to the Commissioner of Human Services and not a final decision. The Commissioner will make his final decision after reviewing this report and the hearing record. In making that decision the Commissioner may adopt, reject or modify Conclusions and Recommendations that appear in this report.

Under Minnesota Law,^[1] the Commissioner may not make his final decision until after the parties have had access to this Report for at least ten days. During that time the Commissioner must give any party adversely affected by this Report an opportunity to file objections to the Report and to present argument supporting its position. Parties should contact Kevin Goodno, Commissioner of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155, to find out how to file exceptions or present argument.

The record of this proceeding closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision.^[2]

MEMORANDUM

On November 8, 2002, the Department filed and served a Notice of Hearing in this administrative contested case proceeding. The Notice placed two matters at issue: (1) whether the Department properly terminated New Life Transportation and Mr. Thigpen from participating in the Medical Assistance program based on Mr. Thigpen's criminal conviction in federal court for defrauding the program; and (2) whether the Department may withhold payment of \$49,419.22 in claims submitted by New Life Transportation based on lack of supporting documentation for the claims and reliable evidence that the claims were fraudulent.^[3]

On January 31, 2003, the Department filed a Motion for Stay of Proceedings or, in the Alternative, an Order for Protection from Discovery. In support of that motion, the Department indicated that proceedings were currently pending before the Inspector General of the United States Department of Health and Human Services (DHHS) in which DHHS was considering whether or not to exclude Mr. Thigpen, as a matter of federal law,^[4] from participation in the federal Medicare program and any state Medicaid program. The Department expressed its expectation that the Inspector General would be ruling on Mr. Thigpen's participation within the next few months, and that such a ruling would render the remaining issue in this proceeding moot.^[5]

On February 12, 2003, the ALJ stayed further proceedings in this matter, including discovery, pending receipt of the decision of the Office of the Inspector General (OIG) on whether to exclude Mr. Thigpen, as a matter of federal law, from participation in the federal Medicare program.

On April 30, 2003, the OIG notified the Department that Mr. Thigpen would be excluded from participation in Medicare, Medicaid, and all federal health programs defined in section 1128B(f) of the Social Security Act effective May 20, 2003.

Following the OIG decision, on June 4, 2003, the Department notified Mr. Thigpen that the federal exclusion effective May 20, 2003, barred Mr. Thigpen from participating in Minnesota's health care programs.^[6] The Department also notified Mr.

Thigpen that it was withdrawing the September 25, 2002 Notice of Agency Action in its entirety.^[7] Mr. Thigpen did not contest the notice within the 30-day appeal period.^[8]

On October 6, 2003, the Department filed its Motion to Dismiss. On October 15, 2003, Mr. Thigpen filed a Motion to for [sic] Restoration [sic] on the basis of Collateral [sic] Estoppel [sic].^[9] Mr. Thigpen argues in the Motion that because the state dismissed its criminal complaint against him, it may not subsequently exclude him from participating in Minnesota's health care programs, because of the doctrine of collateral estoppel.

Mr. Thigpen's argument fails for several reasons: 1. Mr. Thigpen was convicted of healthcare fraud in a criminal case brought by the federal government; 2. Under the doctrine of *res judicata*, the federal criminal conviction conclusively adjudicates the fact that Mr. Thigpen defrauded the Medical Assistance program; 3. The OIG excluded Mr. Thigpen from participation in the Medicaid program under federal law; and 4. The federal exclusion bars Mr. Thigpen from participation in any federally-funded state health care programs in Minnesota until and unless the OIG reinstates Mr. Thigpen and notifies the Minnesota Department of Human Services. The Department is not seeking to retry any issues that have already been adjudicated. On the contrary, it has withdrawn the Notice of Agency Action concerning these issues and seeks to dismiss the connected appeal that is now moot.

The ALJ is unable to see why Mr. Thigpen would object to the dismissal of this contested case. DHS has not disqualified Mr. Thigpen from participating in any federally-funded state health care programs nor is it seeking to do so any longer. It is the federal government that has disqualified him from doing that. And, if there is any recourse for Mr. Thigpen, that recourse would be in the federal system. Additionally, as stated in the previous Order in this case, this is not a forum in which Mr. Thigpen can attack the underlying conviction that led to his federal exclusion from participation in federally-funded healthcare programs.

The Department's withdrawal of the September 25, 2002 Notice of Agency Action renders this appeal moot. Thus, New Life Transportation's appeal is dismissed.

B.H.J.

^[1] Minnesota Statutes § 14.61.

^[2] See Minn. Stat. §14.62, subdivision 2a.

^[3] On January 21, 2003, the Department indicated by letter that it was no longer seeking to withhold payment on the Medical Assistance claims identified in the Notice of Hearing. It indicated that those claims would now be processed and that the resulting payment would be applied to Mr. Thigpen's restitution obligation to the Department.

^[4] 42 U.S.C. § 1320a-7(a)(1) (2002) requires DHHS to exclude any provider convicted under federal law of a "criminal offense related to the delivery of an item or service" from participating in either kind of program for at least five years.

^[5] See *supra* note 1.

^[6] See Affidavit of Ron Nail ("Nail Aff."), Exhibit 2.

^[7] See Nail Aff., Ex. 1.

^[8] See Nail Aff. at ¶ 6.

^[9] On October 21, 2003, the ALJ received from Mr. Thigpen a copy of the Dismissal of Complaint by Prosecuting Attorney Pursuant to Rule 30.01, dated January 18, 2002. This appeared to be an exhibit to his earlier motion which stated: "The end of the case on that day January 18, 2002 prohibits any further prosecution because it was a ruling in [sic] behalf of the defendant"